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IN THE ILLINOIS COMMERCE COMMISSION
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Springfield, IL 62701

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Illinois Commerce Commission
RAIL SAFETY SECTION

UNITED TRANSPORTATION UNION -)
ILLINOIS LEGISLATIVE BOARD,)
against) Case: T04-0027
KANSAS CITY SOUTHERN RAILROAD)

**UTU'S RESPONSE TO OBJECTIONS OF THE KCS TO
THE ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

NOW COMES the UNITED TRANSPORTATION UNION - ILLINOIS LEGISLATIVE
BOARD ("UTU") and for its Objections to the Administrative Law Judge's Proposed Order states
as follows:

1. In its objections, the KCS has raised four (4) substantive objections which are as follows:
 - a. That the ALJ is required to calculate the required floor space in the locker rooms based on the number of lockers assigned to employees and not on the number of lockers physically located in the locker rooms.
 - b. That the ALJ made a wrong fact determination in Concluding that the locker area in the trailer is two (2) separate locker rooms instead of one (1) locker room.
 - c. That the ALJ misinterpreted the Administrative Code in concluding that in order to provide "adequate ventilation" in a locker room there should be a ventilation fan in the lunchroom that removes air from the lunchroom.
 - d. That the ALJ misinterpreted the Administrative Code in concluding that KCS has not provided an adequate shower facility for use by female employees.

Each of these objections will be addressed below.

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2. Objection as to square footage calculation. KCS objects because the ALJ used the total number of lockers in the two (2) locker rooms to calculate the square footage of space required to be provided for employees attempting to use the lockers. KCS's argument is that you only have to calculate the open space based upon the number of employees who have been "assigned" a locker. KCS finds fault with the ALJ's reasoning because the Administration Code, in 1545(a), states that "Employees, as used herein, refers to employees to whom lockers have been assigned". According to KCS, this definition is crystal clear and there should be no room for interpretation. Once again, there is a simple reply to this objection and a pat on the back to the ALJ for applying a standard of "reasonableness" to this situation.

The definition stated above is not crystal clear. Does the number of employees mean all the employees in the company or all the employees who are stationed at a given rail yard. Or could it mean only those employees designated to use a certain locker room where lockers are found. The Administrative Code Part that deals with shelter facilities is not meant to read like NASA's specifications for manufacture of a space shuttle. It is written to inform reasonable people what minimum requirements should be provided for human men and women in a facility where they eat, dress, shower and use the washroom facilities. The ALJ got this part of the Order absolutely correct when he stated:

"The intent of the rule is to assure that there is adequate space in locker rooms for an employee to change clothes, tie shoes and store gear. If no consideration can be given to the actual number of lockers present, then almost any number of unassigned lockers could be placed in a room in such a way as to have technical compliance with the rule but an unusable facility. Such an interpretation of the Code Part is illogical and would render the Rule useless."

The number of "assigned" lockers can literally change on a daily basis. Furthermore, the Code does not state who it is that "assigns" the lockers. KCS' objection assumes that KCS is the one who "assigns" lockers, but that assumption has no support in the Code. In this Hearing, UTU showed the need for 62 lockers to be assigned for T&E employees. This is essentially the number that remained after KCS had originally placed 80 lockers in the facility, but then removed 18 lockers.

A locker room must be a functional room for changing clothes. It is unfortunate that we find ourselves arguing over square footage still at this point, but minimum standards or requirements clearly mean minimum to the KCS.

3. Objection to determination that the locker area is two (2) rooms instead of one (1) room. The KCS continues to argue that the removal of a door between two (2) otherwise separate rooms converts the two (2) rooms into one (1) room. This entire case is about a construction trailer that is jerryrigged to be a shelter facility. The wall between the two (2) locker rooms cannot be removed because the roof of the trailer would collapse. So the KCS is forced to argue, perhaps for the first time in Illinois Commerce Commission history, that a 6'8" X 3' opening (where the door

used to be) between two (2) rooms converts the two (2) rooms into one (1) big room. Meanwhile, the conditions remain poorly laid out and dysfunctional. And all of this tomfoolery, no less, to gain 80 square feet of additional floor space towards the minimum floor space required. Facts do get in the way sometimes. Once again, the ALJ got it right.

4. Objection to determination that “adequate ventilation” in a lunchroom requires the installation of a ventilation fan. Once again, as these Responses are prepared, one has to continually remind ones self that arguments such as this one are being made regarding a room where men and women sit and eat. The Code says that the lunchroom should be “adequately ventilated”. Seems easy enough. Construct the lunchroom with a ventilation fan to the outside. But again, this case is about a trailer that was not designed to be a lunchroom. So instead of a fan being installed, KCS continues to try to cling to this theory that reversing the fan on the heater or air-conditioner is the equivalent of ventilation fan. Never mind the fact that the overcrowding and poor layout of the trailer leaves several heater and air-conditioning vents inoperable due to being covered by lockers. Once again, the KCS is asking the ALJ to move the minimum standard bar down just about as low as it can go.

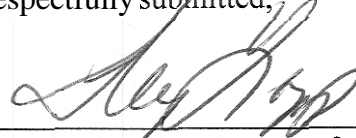
Part 1535.110(b)(3) deals with toilets. In this section it states that “every toilet room shall be adequately ventilated”. There is a forced air ventilation fan in the toilet room. According to KCS reasoning, the ventilation fan in the toilet room must go way beyond what is called for by “adequate ventilation”. Obviously, nobody expects a reversal of the trailer heat and air-conditioner system to be utilized to vent the toilet room.

Common sense and reasonableness need to be the touchstones when it becomes necessary to decide what minimum comforts or standards should be provided for men and women. Functionality is the goal. The ALJ once again got it right.

5. Objection to determination that a convenient shower should be provided for female employees. The gist of KCS’ objection is that the ALJ is requiring KCS to provide a shower for females when the Code does not require them to do that. KCS is absolutely right. KCS is not necessarily required to provide a female shower. However, KCS is missing the point of the ALJ’s finding. The Code does require that a shower be provided in conjunction with lockers or dressing room facilities. A single shower could possibly satisfy the Code (minimum). But the fact that the shower is located in a completely separate trailer from where the females have lockers is hardly “in conjunction” with that locker room. “In conjunction” should at the very least equate to some convenient connection, i.e. the same room or at worst the same trailer.

For all the foregoing reasons, the UTU respectfully requests that ALJ disregard each of KCS' objections.

Respectfully submitted,



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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**UNITED TRANSPORTATION UNION -
ILLINOIS LEGISLATIVE BOARD,**

against

KANSAS CITY SOUTHERN RAILROAD

Case: T04-0027

NOTICE OF FILING

TO:

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PLEASE TAKE NOTICE THAT on the 22nd day of January, 2007, I filed the attached UTU'S RESPONSE TO OBJECTIONS OF THE KCS TO THE ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER.

By: _____

One of Its Attorneys

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PROOF OF SERVICE

I, the undersigned, an attorney, on oath state that I served this notice to the above parties at their respective addresses on January 19th, 2007, by United States First Class Mail.

SUBSCRIBED and SWORN to before
me this 19th day of January, 2007.

Denise Baumgartner
Notary Public

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